

BEFORE THE SOUTH CAROLINA BOARD OF EXAMINERS IN OPTOMETRY

In the Matter of:)
)
James G. Howard, O.D.,)
) **ORDER**
License No. 719-D,)
)
Respondent.)
)
Complaint No. 1254)
OGC File # 99-OPTO.0001)
)

This matter came before the Board of Examiners in Optometry (the Board) for hearing on May 3, 2000, as a result of the Notice and Complaint served upon the Respondent and filed on March 24, 2000. A quorum of Board members was present. Pursuant to S.C. Code Ann. §40-37-210(Supp. 1999), Regulation 95-20 of the Rules and Regulations of the Board, S.C. Code Ann. §40-1-70(6) (Supp. 1999), and the provisions of the Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, et seq. (1976), as amended, the Board at that time heard the charges alleged in the Notice and Complaint. The State was represented by Robert M. Wood, Esquire. The Respondent appeared and was not represented by counsel.

The Respondent was charged with violation of S.C. Code Ann. §§40-1-110(1)(h), 40-37-220(2), (4), and (8) (Supp. 1999).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is duly licensed as an optometrist by the Board, and was licensed as an optometrist by the Board at the time of the events at issue in this matter.

2. On or about October 29, 1997, the Respondent was arrested, and subsequently indicted, on two counts of drug violations involving trafficking in cocaine in excess of 400 grams, and distribution of methamphetamine (Crank).

3. On December 16, 1998, the Respondent entered a guilty plea to reduced charges of simple possession, first offense, on both counts. On arrest warrant F-495280, indictment 98-GS-04-1837, he was convicted of possession of cocaine in violation of S.C. Code Ann. §44-53-370(d)(1). On arrest warrant F-495279, indictment 98-

GS-04-1838, he was convicted of possession of methamphetamine (Crank) in violation of S.C. Code Ann. §44-53-375(d)(1) [an apparent error intended to refer to S.C. Code Ann. §44-53-375(A)].

4. The Respondent was sentenced on December 16, 1998. On the cocaine violation, the Respondent was sentenced to two years' incarceration, suspended, with probation for two years, on condition that the Respondent submit to and pass a drug screen each quarter. On the methamphetamine violation, the Respondent received five years' incarceration, suspended, with probation concurrent with the prior sentence.

5. Conviction of simple possession of methamphetamine, first offense, is a Class F felony under S.C. Code Ann. §16-1-90(F).

6. Conviction of simple possession of cocaine, first offense, is a Class B misdemeanor under S.C. Code Ann. §16-1-100(B).

7. On September 17, 1999, the Board received the Respondent's 2000 renewal application. The Respondent reported his conviction on this application. In explaining his arrest and conviction, the Respondent wrote that he "had a problem with alcohol and the recreational use of drugs" in 1997, and represented that he was now rehabilitated.

8. In January of 2000, the Respondent was released from probation.

9. The Respondent entered into a Memorandum of Agreement and Stipulations which was presented to the Board in this matter. In the Memorandum of Agreement and Stipulations the Respondent stipulated and admitted the facts recited above, and admitted that these acts presented grounds that constitute misconduct under S.C. Code Ann. §§40-1-110(1)(h) and 40-37-220, as alleged.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that grounds for discipline exists, S.C. Code Ann. §§40-1-120 and 40-37-230(Supp. 1999) provide that, among other actions, the Board has the authority to: issue a public reprimand; impose a fine; place a licensee on probation or restrict or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or

suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs; permanently revoke a license; and impose the reasonable costs of the investigation and prosecution of a case.

2. The Respondent has violated S.C. Code Ann. §§40-1-110(1)(h), 40-37-220(2), (4), and (8) (Supp. 1999), in the following particulars:

A. S.C. Code Ann. §40-1-110(1)(h), in that he has been convicted of a crime involving drugs, as evidenced by his guilty plea and sentencing on December 16, 1998, as described above.

B. S.C. Code Ann. §40-37-220(2), in that he has been convicted of a felony, as evidenced by his guilty plea and sentencing on December 16, 1998, as described above.

C. S.C. Code Ann. §40-37-220(4), in that he uses alcohol or drugs to such a degree as to adversely affect his ability to practice optometry, as evidenced by his guilty plea and sentencing on December 16, 1998, as described above, and his admission of problems with alcohol and the recreational use of drugs, which indicate dependency or addiction to alcohol and drugs which adversely affect the ability to practice.

D. S.C. Code Ann. §40-37-220(8), in that he has sustained a physical or mental impairment or disability which renders further practice by him dangerous to the public, as evidenced by his guilty plea and sentencing on December 16, 1998, as described above, and his admission of problems with alcohol and the recreational use of drugs, which indicate physical or mental dependency or addiction to alcohol and drugs which would make further practice dangerous to the public.

3. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified optometrists against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the Respondent, but to protect the life, health, and welfare of the people at large.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Respondent's license to practice optometry in this State is hereby suspended for a period of one year from the date of

this order. This suspension shall be stayed and the Respondent's license reinstated in a probationary status for a period of five years from the date of this order.

2. During the period of probation the Respondent's license shall be subject to the following terms and conditions of probation, which shall remain in effect until completion of probation, or until further order of the Board:

A. The Respondent shall be subject to periodic, unannounced blood and urine drug analysis as desired by the Board, the purpose being to ensure that the Respondent remains drug free. The cost of such blood and urine drug analyses and reports will be borne by the Respondent, which costs shall be paid within thirty (30) days after the date of the invoice therefor. Failure to make timely payment of such costs, to provide a specimen upon request, or to remain drug-free shall be considered a violation of this order.

B. The Respondent must be an active participant in the activities of Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) or other counseling program(the Program), as approved in advance in writing by the Board. The required frequency of attendance at the Program shall be as recommended by the Program, and approved by the Board, or, in the event no frequency is recommended by the Program, as determined by the Board.

C. The Respondent shall pay the costs of this case in the amount of \$102.86.

D. The Respondent shall appear and report to the Board as requested by the Board.

E. The Respondent shall comply with the terms of this final order and all state and federal statutes and regulations concerning the practice of optometry.

F. The Respondent shall promptly advise this Board in writing of any changes in address, practice, professional status, or compliance with this final order. Correspondence and copies of reports and notices mentioned herein shall be directed to:

South Carolina Department of Labor,
Licensing, and Regulation
Board of Examiners In Optometry
P.O. Box 11329
Columbia, SC 29211-1329

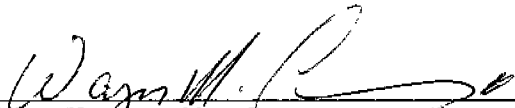
3. Failure by the Respondent to abide by any of the aforementioned conditions of probation during the period of probation shall warrant the immediate temporary suspension of his license to practice optometry in this State pending hearing into the matter and until further order of the Board which may include further sanctions, in its discretion, upon the Respondent's license.

4. The Respondent shall cooperate with the Board, its attorneys, investigators, and other representatives in the investigation of Respondent's practice and compliance with the provisions of this final order. It is the Respondent's responsibility to demonstrate compliance with each and every provision of this final order. The Respondent may be required to furnish the Board with additional information as may be deemed necessary by the Board or its representatives. In addition to such requests, the Board, in its discretion, may require the Respondent to submit further documentation regarding the Respondent's practice, and it is the Respondent's responsibility to fully comply with all such requests in a timely fashion. Failure to satisfactorily comply with such requests will be deemed a violation of this final order.

5. This final order shall take effect upon the service of the order on the Respondent.

AND IT IS SO ORDERED.

BOARD OF EXAMINERS IN OPTOMETRY



Dr. Wayne M. Cannon
Chairman

May 11, 2000.